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TO SECSTATE WASHDC 8166
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E.O. 11652 N/A
TAGS SHUM, AR
SUBJECT JUDICIAL IMPROVEMENTS AND ACTIVITIES - A ROUNDUP

1. JUDICIAL FUNDING PLAN---

THE JUSTICE MINISTRY RECENTLY ANNOUNCED THE CREATION OF A SPECIAL FUND FOR IMPLEMENTING JUDICIAL IMPROVEMENTS. UNDER THE TERMS OF PUBLIC LAW 21,859 WHICH WENT INTO EFFECT ON OCTOBER 1, 1978, A NEW SCALE OF JUDICIAL FEES HAS BEEN ESTABLISHED WHICH ARE TO BE PUT INTO A SPECIAL "JUDICIAL INFRASTRUCTURE ACCOUNT." THESE FUNDS, WHICH ARE ESTIMATED BY A MINISTRY OF JUSTICE SPOKESMAN TO AMOUNT TO ABOUT 300 MILLION PESOS A MONTH (AT PRESENT EXCHANGE RATES OVER \$330,000), WILL BE USED TO CONSTRUCT AND REPAIR EXISTING BUILDINGS AND PURCHASE NEEDED OFFICE EQUIPMENT TO MODERNIZE COURT FACILITIES.

2. ACCORDING TO THE MINISTRY SPOKESMAN, THE FUNDS FIRST MAJOR PROJECT WILL BE THE ESTABLISHMENT OF 15 NEW CIVIL COURTS AND 10 NEW COMMERCIAL COURTS TO EASE THE CASE LOAD BURDEN ON THE PRESENT LEGAL SYSTEM. THE FUND WILL BE USED TO BORROW MONEY FOR THE CONSTRUCTION

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OF A NATIONAL LEGAL CENTER WHICH IS TO BE BUILT OVER THE NEXT SEVEN OR EIGHT YEARS IN BUENOS AIRES AT A COST OF \$180 MILLION. THE FUND WAS DESCRIBED AS A

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ARGENTINA PROJECT (S200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
☒ Release ☐ Excise ☐ Deny
Exemption(s):
Declassify: ☐ In Part ☒ In Full
☐ Classify as ☐ Extend as ☐ Downgrade to
Date ☐ Declassify on Reason
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CONCRETE STEP IN BRINGING ABOUT A RAPID AND EFFICIENT
SYSTEM OF JUSTICE IN ARGENTINA.

3. HUMAN RIGHTS ORGANIZATIONS AND LAWYERS HAVE
EXPRESSED CONCERN TO THE EMBASSY THAT THE LAWS NEW
JUDICIAL FEE STRUCTURE WILL MAKE HABEAS CORPUS AND
AMPARO PETITIONS EXPENSIVE. THE EXISTING JUDICIAL
TARIFFS ARE BEING INCREASED BY 50 PERCENT AND A NEW
FEE IS BEING INTRODUCED OF ABOUT \$35 FOR THE FILING
OF A WRIT OF HABEAS CORPUS OR AMPARO, IF THE REPLY
IS NEGATIVE. THESE ARE NOW FREE. A PERMANENT
ASSEMBLY LEADER CLAIMED THAT OVER 50,000 HABEAS CORPUS
PETITIONS FOR DISAPPEARED PERSONS HAVE BEEN FILED
SINCE MARCH, 1976. (NOTE: HABEAS CORPUS PETITIONS
ARE OFTEN REPEATED, SO THIS NUMBER CANNOT BE DIRECTLY RELATED
TO TOTAL DISAPPEARANCES.) A FORMER JUDICIAL OFFICIAL
INFORMED THE EMBASSY THAT OVER 11,000 HABEAS CORPUS
PETITIONS WERE FILED IN THE FEDERAL CAPITAL OF BUENOS
AIRES ALONE IN 1977. HERETOFORE, MOST HABEAS CORPUS
PROCEEDINGS HAVE HAD NEGATIVE RESULTS AS THE MILITARY
SERVICES' AND POLICE ROUTINELY REPORT THAT THEY HAVE
NO INFORMATION ON THE PERSON BEING SOUGHT.

4. JUDICIAL REFORM CONFERENCES---
ON OCTOBER 12 OVER THREE HUNDRED OUSTANDING LAWYERS,
PROSECUTORS AND MEMBERS OF THE FEDERAL AND PROVINCIAL
JUDICIARY MET IN MAR DEL PLATA FOR DISCUSSION OF JUDICIAL
REFORM. DR MARK CANNON, US SUPREME COURT ADMINI
STRATOR, AND DR JOSEPH EBERSOLE, EXECUTIVE DIRECTOR
OF FEDERAL JUDICIAL CENTER IN WASHINGTON, WERE HIGH
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LIGHTED AS KEY CONFERENCE PERSONALITIES. AMBASSADOR
CASTRO, LAWYER, FORMER PROSECUTOR AND JUDGE, ALSO
PARTICIPATED IN CONFERENCE.

5. RESULTS FROM CONFERENCE WERE ALL POSITIVE. IT
WAS THE FIRST TIME THAT THE PRESIDENT OF SUPREME COURT
HAD MET WITH FEDERAL AND PROVINCIAL JUDGES FROM
THROUGHOUT THE COUNTRY. THE CONFERENCE ESTABLISHED
AN IMPORTANT PRECEDENT. SUPREME COURT JUSTICE
GARBRIELLI INFORMED THE AMBASSADOR THAT ANNUAL
CONFERENCES WOULD BE HELD IN THE FUTURE WITH ALL
ARGENTINE JUDGES.

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6. ON OF KEY TOPICS FOCUSSED ON AT THE CONFERENCE .
WAS THE INDEPENDENCE OF THE COURTS FROM THE EXECUTIVE.
THERE WAS COMPLETE CONCURRENCE ON THE NEED FOR BETTER
TRAINING AND SELECTION OF JUDGES, WHICH INCLUDED
BETTER PAY SCALE AND MORE DIGNIFIED WORKING CONDITIONS.
MORE EFFECTIVE AND PROPER USE OF HABEAS CORPUS AND
LEY DE AMPARO PROCEEDINGS WERE ALSO DISCUSSED .

7. AS A RESULT OF THE CONFERENCE THE TWO MAIN BAR
ASSOCIATIONS IN BUENOS AIRES PLAN TO HOLD SEMINARS
ON JUDICIAL REFORM, JUDICIAL INDEPENDENCE AND BETTER
SELECTION AND TRAINING OF JUDGES. THE LOCAL BAR OF
COMPARATIVE LAW WILL SOON HOLD A SEMINAR ON COMPARA
TIVE LAW BETWEEN THE UNITED STATES AND ARGENTINA.
LAW PROFESSORS FROM HARVARD, DUKE AND ARIZONA STATE
WILL BE PARTICIPATING. THE AMBASSADOR HAS BEEN
INVITED TO ALL THESE SEMINARS.

8. JUDICIAL REVIEW OF STATE OF SIEGE CASES---
SEVERAL MOVE CASES HAVE FOLLOWED THE RECENT
PRECEDENTS SET BY THE SUPREME COURT IN THE TIMERMAN
APPEAL (SEE BUENOS AIRES 5646) AND THE CRIMINAL
APPEALS COURT IN THE HABEAS CORPUS CASE INVOLVING
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14 WOMEN PEN PRISONERS (SEE BUENOS AIRES 8212) IN
CHALLENGING THE REASONABLENESS OF THE STATE OF SIEGE
DETENTIONS.

9. ON OCTOBER 23 THE FEDERAL CRIMINAL APPEALS COURT
REVERSED A LOWER COURTS DISMISSAL OF 157 PETITIONS
FOR WRITS OF HEABEAS CORPUS. THE APPELLATE COURT
WENT ON TO REBUKE THE LOWER COURT FOR ITS HANDLING
OF HABEAS CORPUS' CASES AND INSISTED ON MORE THOROUGH
INVESTIGATIONS OF THESE CASES. IT EVEN CASTIGATED
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THE LOWER COURT FOR NOT PERFORMING ITS DUTIES AS
PRESCRIBED BY THE CONSTITUTION.

10. AT THE SAME TIME, THE CRIMINAL APPEALS COURT IN ANOTHER
DECISION ISSUED AN ORDER RELEASING
FOUR WOMEN DETAINED BY THE EXECUTIVE (PEN). THE COURT
STATED THAT UNDER ARTICLA 23 OF THE FEDERAL CONSTITU
TION THE EXECUTIVE BRANCH, THROUGH ITS PROSECUTORS,
HAD SUBMITTED REPORTS SO FULL OF INCONSISTENCIES THAT
IT FAILED TO CARRY ITS BURDEN OF PROOF. THE WOMEN
ORDERED TO BE RELEASED WERE HORTENCIA ROMANO, PAULAINA
MACUULIA, BEATRIZ ZULEMA GRASSO AND IRENE ZECCA.

1. THIS NEW LINE OF DECISIONS HAS BROUGHT OUT SUPPORT
FROM THE BAR AND THE PRESS. ON NOVEMBER FIRST, THE
LAWYERS ASSOCIATION ISSUED A PUBLIC STATEMENT, WHICH
WAGIVEN WIDE PRESS PLAY, POINTING OUT "THE IMPORTANCE
AND INSTITUTIONAL SIGNIFICANCE" OF THE RECENT HABEAS
CORPUS DECISIONS, AND THE FACT THAT THE DECISIONS
DEMONSTRATED THE INDEPENDENCE OF THE JUDICIARY.

12. FAVORABLE EDITORIAL COMMENT ON THESE DECISIONS
[REDACTED]
[REDACTED]

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WAS RUN BY THE BUENOS AIRES HERALD AS PART OF A MAJOR
EDITORIAL THEME ON THE RULE OF LAW. BUT PERHAPS, OF
MORE SIGNIFICANCE, WAS THE RUNNING OF AN OP-ED STORY
IN THE ARMY CONTROLLED LA OPINION AND OP-ED PIECES
IN THE LA PRENSA ON "REORGANIZATION OF THE JUDICIARY"
AND "THE SUPREME COURT DEFENDS FUNDAMENTAL RIGHTS".
IN THE LATTER LONG ANALYTICAL PIECE, FULSOM PRAISE
WAS DIRECTED AT THE SUPREME COURTS FOR REAFFIRMING
THE PRINCIPLE THAT THE EXECUTIVE CAN ONLY SUSPEND

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THOSE RIGHTS DURING A STATE OF SIEGE WHICH CAN BE SHOWN TO AGGRAVATE THE EMERGENCY SITUATION. THE ARTICLE PRESENTED A DETAILED DISCUSSION OF THE CASE. THE ONLY FACT IT OMITTED WAS THE NAME OF THE PLAINTIFF IN THE CASE--JACOBO TIMERMAN.

13. DISAPPEARANCE CASES CONTINUE TO BE TURNED DOWN--- ALTHOUGH THE SUPREME AND CRIMINAL APPEALS COURTS HAVE MOVED IN PEN DETAINEE CASES, THE COURTS STILL REFUSE TO ACCEPT JURISDICTION OVER ANY DISAPPEARANCE CASES EXCEPT PROFORMA HABEAS CORPUS PETITIONS. ON JULY 28, THE SUPREME COURT DELCARED ITSELF INCOMPETENT TO HEAR THE CASE BROUGH BY THE SOCIALIST WORKERS PARTY (PST) CLAIMING THAT OVER A HUNDRED MEMBERS OF THE FORMERLY FUNCTIONING POLITICAL PARTY HAD BEEN ABDUCTED BY GOVERNMENT AGENTS SINCE MARCH, 1976. THE PST'S LAWYER RESPONDED ON AUGUST 7 STATING THAT IT IS IMPOSSIBLE THAT SUCH A FUNDAMENTAL HUMAN RIGHT IS NOT PROTECTED UNDER THE ARGENTINE CONSTITUION DUE TO A PROCEDURAL PROBLEM. THE PST BRIEF ARGUES IF THE LAW DOES NOT HAVE A SPECIFIC PROCEDURAL REMEDY, BUT A CLEAR INJUSTICE IS DEMONSTRATED, THE THE JUDICIAL POWER MUST FIND A LEGAL RECOURSE TO PROTECT THE FUNDAMENTAL RIGHTS AT STAKE. IN ANOTHER CASE, FEDERAL [REDACTED]
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DISTRICT COURT JUDGES HAVE REFUSED TO ACCEPT JURIS DICTION IN A CASE CHARGING THE EXCUTIVE WITH THE WRONGFUL DETENTION OF A YOUNG WOMAN. THE CHARGES ARE SUPPORTED BY A SWORN STATEMENT OF A JAIL GUARD THAT THE GIRL WAS HELD FOR OVER A MONTH AT A SUBURBAN POLICE STATION OUTSIDE OF BUENOS AIRES.

14. DESPITE THESE RECENT CASES, A COALITION OF HRO'S CONSISTING OF THE PERMANENT ASSEMBLY FOR HUMAN RIGHTS (PAHR), THE LEAGUE FOR THE RIGHTS OF MAN (LIGA), AND THE ECUMENICAL MOVEMENT FOR HUMAN RIGHTS (MEDH) HAS BEEN PREPARING AN EXTRAORDINARY HABEAS CORPUS PETITION FOR THE SUPREME COURT. THE PETITION ASKS THE COURT TO UNDERTAKE INVESTIGATIONS OF THE LARGE NUMBER OF PERSONS REPORTED MISSING IN ARGENTINA UNDER CIRCUM STANCES WHICH INDICATE GOVERNMENT INVOLVEMENT. ALTHOUGH THE NEW PETITIONS LEGAL ARGUMENTATION IS EXPECTED TO TRACK THAT PREVIOUSLY PRESENTED TO AND REJECTED BY THE HIGH COURT, THE NEW PETITION WILL BE MUCH LARGER

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IN SCOPE. IT WILL BE SUBMITTED BY OVER 1200 FAMILIES OF DISAPPEARED PERSONS. THE SUBMISSION IS REPORTED TO BE MORE POLITICAL IN TONE AND ANNOUNCEMENTS REGARDING THE PETITION WILL BE GIVEN TO THE MEDIA IN ARGENTINA AND ABROAD IN AN EFFORT TO FORCE THE SUPREME COURT TO INVOLVE ITSELF IN THE DISAPPEARANCE QUESTION.

15. A COALITION LAWYER LEARNED BY CHANCE THAT THE SUPREME COURT SUPPRESSED THE EXECUTIVES FORMAL REPLY TO THE SUPREME COURT'S 1977 INQUIRY ON THE DISAPPEARANCE CASES RAISED IN THE FIRST SMITH PETITION. THE EXECUTIVES REPLY IS REPORTED TO HAVE FLATLY REJECTED THE COURTS REQUEST FOR INFORMATION ON A BLUNT SEPARATION OF POWERS THEORY WHICH STATED THAT THE COURT ONLY THINKS, BUT THE EXECUTIVE ACTS.

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16. HABEAS CORPUS FILINGS---
ACCORDING TO A BUENOS AIRES ATTORNEY WHO CONTINUES TO ACCEPT DISAPPEARANCE AND DETAINEE CASES, THE NUMBER OF HABEAS CORPUS PETITIONS BEING FILED WITH THE JUDICIARY HAS FALLEN DRAMATICALLY IN THE LAST FEW MONTHS. THE ATTORNEY NOTED THAT IN FEBRUARY AND MARCH 1978 OVER 20 HABEAS CORPUSES WERE FILED DAILY IN THE BUENOS AIRES COURTS. THE DAILY AVERAGE NOW IS AROUND SIX OR SEVEN. OVER 11,000 HABEAS CORPUS PETITIONS WERE REPORTEDLY FILED IN THE FEDERAL CAPITLA ALONE DURING 1977 REGARDING DISAPPEARANCE CASES. (NOTE: IT SHOULD BE REMEMBERED THAT FAMILIES AND FRIENDS MAY FILE REPEAT HABEAS CORPUS PETITIONS REGARDING A SINGLE DISAPPEARANCE CASE.)

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17. THE SUPREME COURT OF THE PROVINCE OF BUENOS AIRES
ISSUED A RESOLUTION ON JUNE 13, 1978 RECOMMENDING THAT
ALL THE PROVINCIAL COURTS NOT SUBMIT HABEAS CORPUS
PETITIONS TO THE MILITARY JOINT STAFF (ESTADO MAYOR
CONJUNTO).

18. MILITARY COURT UNDERTAKING SUBVERSION CASES---
SEVERAL OF THE REVOLUTIONAL COMMUNIST PARTY (PCR)
MEMBERS WHO WERE ARRESTED DURING THIS SPRINGS SAN
JUSTO OPERATIONS HAVE BEEN BROUGHT BEFORE MILITARY
TRIBUNALS. ACCORDING TO PCR CONTACTS AND FAMILY
MEMBERS, CHARGES ARE BEING BROUGHT AGAINST THESE PERSONS
FOR POSSESSION OF WEAPONS BASED ON CONFESSIONS OBTAINED
DURING THEIR HOSTILE INTERROGATION WHILE THE PCR
MEMBERS WERE HELD CLANDESTINLY IN THE TABLADA
MILITARY BARRACKS. REPORTEDLY, ONE PCR MEMBER REFUSED
TO SIGN HIS CONFESSION CLAIMING THAT HE NEVER OWNED A
GUN, HE WAS TOLD THAT AS HE HAD CARRIED A GUN IN THE
ARMY AND IT WAS PROPER TO INCLUDE THE FACT IN HIS
CONFESSION. HE REPORTEDLY SIGNED UNDER DURESS.

19. COURT ACTIONS AGAINST TERRORISTS AND SUBVERSIVES---

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THE LOCAL PRESS HAS REPORTED IN THE LAST SEVERALL
MONTHS A NUMBER OF COURT DECISIONS AGAINST MONTONERO
AND ERP MILITANTS, ESPECIALLY WITHIN THE JURISDICTION OF
THE ARMY SECOND COPRS (ROSARIO AREA). FORTY ONE ERP
AND MONTONERO MEMBERS HAVE BEEN CONVICTED AND GIVEN
STIFF SENTENCES UP TO LIFE IMPRISONMENT BY THE COURTS
THERE. IN ONE CASE FOUR ERP MEMBERS WERE GIVEN LIFE
SENTENCES FOR KILLING AN ARMY MAJOR ON NOVEMBER 7, 1974.
(THIS IS THE FIRST "JUDICIAL" ACTION WE CAN REMEMBER
AGAINST TERRORIST ACCUSED OF CAUSING PHYSICAL INJURY
TO MILITARY PERSONNEL.)

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20. JUDICIAL PROCEEDINGS IN OTHER CORPS AREAS HAVE NOT BEEN AS NUMEROUS. IN THE THIRD CORPS AREA (CORDOBA), JUDICIAL SENTENCES AGAINST TWO PERSONS -- ON A FORMER TUPAMARO -- WERE ANNOUNCED AND SEVEN PERSONS AFFILIATED WITH THE MONTONEROS WERE REPORTED ARRESTED. IN FIFTH CORPS AREA (BAHIA BLANCA), FIVE SUBVERSIVES RECEIVED HALF OF THE NORMAL SENTENCES AS THEY TURNED THEMSELVES IN. IN THE FIRST CORPS AREA (BUENOS AIRES), THREE JUDICIAL DECISIONS WERE REPORTED AGAINST SUBVERSIVES. IN A UNUSUAL CASE THE CRIMINAL APPEALS COURT ORDERED THE INVESTIGATION OF THE REPORTED TORTURE OF A BUSINESS MAN BY MEMBERS OF THE BUENOS AIRES PROVINCIAL POLICE.

21. COMMENT: IT WOULD BE NAIVE TO ANTICIPATE BROAD SCALE JUDICIAL REFORMS IN ARGENTINA. ON THE OTHER HAND, PROGRESS IS BEING MADE, EVEN THOUGH IT IS SLOW AND UNEVEN. THE GROWING AWARENESS IN THE LEGAL PROFESSION AND IN OTHER SECTORS OF ARGENTINE SOCIETY OF THE NEED FOR JUDICIAL REFORM AND THE NECESSITY OF REESTABLISHING THE RULES OF THE GAME AS PART OF THE "NATIONAL REORGANIZATION PROCESS" IS AN ENCOURAGING

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FACTOR. WE NOTE THIS ATTITUDE NOT ONLY IN LIBERAL AND INTELLECTUAL CIRCLES BUT AMONG TRADITIONAL AND CONSERVATIVE GRUPS AS WELL. THES LATTER GROUPS ARE JUST BEGINNING TO EXPRESS CONCERN ABOUT THE STATE OF THE LAW. WHILE THESE CONSERVATIVES APPROVE THE EXTRAORDINARY STEPS TAKEN BY THE MILITARY TO RESTORE PUBLIC ORDER, WE ARE NOW HEARING MORE OF THEIR VOICES RAISED OVER THE LACK OF RESPECT FOR THE LAW AND THE LEGAL TRADITIONS OF THE NATION. AFTER THE PERCEIVED EMERGENCY IS OVER, REVOLUTIONARY STYLE JUSTICE BECOMES SEEN AS A THREAT TO CONSERVATIVE GROUPS. THEY ARE NOW BEGINNING TO CONSIDER THE BASIC QUESTIO OF WHO POLICES THE POLICEMEN. END COMMENT. CASTRO

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